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REVISED
RECOMMENDED CONDITIONS OF APPROVAL

**GENERAL AND SPECIFIC PLAN AMENDMENT NO. GP2003-1, ZONING MAP
AMENDMENT NO. ZC2003-2, VESTING MAJOR TENTATIVE MAP NO. MA2003-4,
PLANNED UNIT DEVELOPMENT NO. PD2003-1, SITE AND ARCHITECTURE APPROVAL
(P-SZ2003-6), USE PERMIT NO. P-UP2003-26 AND EIA NO. EA2003-7**

A request for land use changes affecting the following zoning designations: General Commercial, Parks and Open Space, Multi-Family High and Very High Density Residential, and Mixed Use. A request to develop approximately 35 acres of vacant land near the Elmwood Correctional Facility for 683 residential units including small lot single family, townhomes, and condominiums, public park space, and associated development standard deviations.

Both sides South Abel Street, north of the Elmwood Correctional Facility and land located along the eastern edge of I-880, north of Great Mall Parkway (APN's: 086-05-003, 009, 012, 021, 086-10-001, 025 & 026, 086-11-008 & 013, and 086-25-010)

Original Approval

Planning Commission Meeting: November 17, 2004
City Council Meeting: January 18, 2005

Revised Approval (TM2005-1 COA Nos. 69 & 86a)

Planning Commission Meeting: November 9, 2005
City Council Meeting: December 6, 2005

CONDITIONS OF APPROVAL

GENERAL PROJECT CONDITIONS OF APPROVAL:

SPECIAL CONDITIONS FROM THE PLANNING DIVISION

1. **Mitigation Measures:** The project shall comply with all mitigation measures as contained in the mitigation monitoring program for the Elmwood Residential and Commercial Project. (P)
2. **Public Improvement Plans:** Public Improvement Plans for all public streets shall be submitted to the City as part of the Public Improvement Package. (P)
3. **Parks:** All public parks and associated improvements, including walls and fences shall be in place prior to 50 percent of the project (342 residential units) being finalized by the City. (P)
4. **Affordable Housing:** The applicant shall provide a minimum of 20 percent affordable units with the project. It is expected that the applicant will be entering into a Disposition and Development Agreement (DDA) with the City in part to address the affordable housing associated with the project. (P)
5. **MM – Traffic:** Prior to building permit issuance for the residential units, the applicant shall complete and submit a traffic signal warrant analysis for the following intersections: (P, Mitigation Measure TR-1 and TR-2)
 - a. South Main Street and Carlo Way;
 - b. South Main Street and Corning Avenue.
6. **MM – Traffic:** Prior to the issuance of any building permits (except for the model homes), traffic impact mitigation fees totaling \$1,865,000 shall be submitted to the City. The breakdown of mitigation fees are as provided below: (P, Mitigation Measure TR-4, TR-5 & TR-6)

- a. Montague Expressway Corridor Fee - \$465,000
 - b. Calaveras Boulevard Corridor Fee - \$1,000,000
 - c. Great Mall Parkway Corridor Fee - \$400,000
7. **MM – Air Quality:** Prior to building permit issuance, permit plans shall implement the following Best Management Practices (BMP's) at all project construction sites: (P, Mitigation Measure AQ-1)
- a. Water all active construction areas;
 - b. Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard;Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking and staging areas;
 - c. Sweep daily;
 - d. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas;
 - e. Enclose, water or apply non-toxic soil binders to exposed stockpiles;
 - f. Limit traffic speeds on unpaved roads to 15 miles per hour;
 - g. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
 - h. Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts.
8. **MM – Air Quality:** Prior to any permit issuance, permit plans shall include Bay Area Air Quality Management District (BAAMQD) Best Management Practices (BMP's) as identified in Mitigation Monitoring Table. (P, Mitigation Measure AQ-1)
9. **MM – Noise:** Prior to building permit issuance, the applicant shall submit a detailed noise analysis for review and approval by the City that ensures that all units have an interior noise level that does not exceed 45 dB DNL. The applicant shall incorporate all noise attenuation recommendations as identified in the noise analysis to meet the 45dB DNL requirement. (P, Mitigation Measure NOI-1)
10. **MM – Noise:** During construction, the applicant shall implement the following measures to reduce construction noise: (P, Mitigation Measure NOI-5)
- a. Construction shall be limited to the hours of 7:00AM to 7:00PM on weekdays, and 9:00AM to 5:00PM on Saturdays, with no noise generating construction on Sundays and holidays.
 - b. Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.
 - c. Utilize quiet models of air compressors and other stationary noise sources where the technology exists.
 - d. Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
 - e. Prohibit unnecessary idling of internal combustion engine.
 - f. Designate a noise disturbance coordinator who would be responsible for responding to any local complaints about construction noise. The coordinator would determine the cause of the noise complaints and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the coordinator at the construction site.
11. **MM – Biology:** Appropriately timed surveys shall be conducted by a qualified botanist according to protocols acceptable to USFWS (US Fish and Wildlife) and CDFG (California Dept. Fish and Game) to determine the presence/absence of special status plant species. If presence is detected notification and appropriate protocols for relocation and/or mitigation and monitoring plan, to the approval of the

City, for the plant species shall be prepared for long-term protection. The plan shall be implemented either before or concurrently with ground disturbing activities on the property. (P, Mitigation Measure BIO-1)

12. **MM – Biology and Hydrology:** The applicant shall modify the existing Stormwater Pollution Protection Plan (SWPPP). This plan shall include provisions to minimize on-site and off-site impacts to biological resources and water quality resulting from project related runoff. Measures shall include the following: (P, Mitigation Measure BIO-2 and HYD-11)
 - a. The use of silt fencing, fiber rolls, sediment basins, and other measures to reduce the movement of construction-related sediments into Penitencia Creek and other sensitive habitats.
 - b. Installation of grit and oil trap systems, which shall be maintained in perpetuity.
 - c. Implementation of BMP's to prevent the discharge of construction debris and soils into Penitencia Creek during site clearing, grading and construction.
 - d. As required, dewatering the section of creek channel surrounding the work areas associated with outfall and bridge construction. The dewatering structure shall be to the approval of the City.
 - e. The applicant shall retain a construction manager familiar with NPDES permit requirements to monitor construction activities.
13. **MM – Biology:** If trees or shrubs are proposed to be removed during February 15 and August 1, the applicant shall comply with all City and CDFG requirements for vegetation removal to ensure no raptor nest establishment occurs in trees and shrubs scheduled for removal. . (P, Mitigation Measure BIO-3)
14. **MM – Biology:** Prior to any discing for fire or weed control, a burrowing owl nesting/occupancy survey shall be completed on the property. Surveys shall be completed in compliance with all CDFG requirements. (P, Mitigation Measure BIO-4)
15. **MM – Biology:** An approved CDFG Mitigation Agreement shall be complied with by the applicant and shall comply with the protocols contained in the agreement, including but not limited to surveys, passive relocation of the owls, hand-tool burrow removal, and purchase of off-site land for purposes of suitable owl habitat in perpetuity. (P, Mitigation Measure BIO-5)
16. **MM – Biology:** Pre-construction surveys for burrowing owls shall occur no more than 30-days prior to any ground disturbance activities on the site. If owls are discovered, the applicant may use passive relocation prior to February 1, if discovered after February 1, the owls must be left on-site and a 250-foot buffer shall be established and maintained until September 1. (P, Mitigation Measure BIO-5)
17. **MM – Geology:** Prior to approval of the final map or issuance of grading plans, the applicant shall submit a final geology and soils report addressing seismic ground shaking, liquefaction and other geologic oils seismic issues to the approval of the City. Development of the project shall be in conformance with approved final geology and soils report. (P, Mitigation Measure GEO-1)
18. **MM – Hydrology:** Prior to building permit issuance, the design of storm water collection and conveyance systems shall minimize erosion and other potential problems for on-site and adjacent properties. (P, Mitigation Measure HYD-7)
19. **MM – Hydrology:** Permit plans shall incorporate minimization of on-site areas of impervious surfaces where possible to reduce runoff. (P, Mitigation Measure HYD-8)
20. **MM – Hydrology:** The BMP's of the stormwater control plan shall include the provision of storm drain system signs or stenciling with language to discourage illegal dumping of unwanted material into the catch basins and field inlets. (P, Mitigation Measure HYD-9)
21. **MM – Hydrology:** Prior to building permit issuance, proof shall be submitted to the City that project CC&R's include provisions for BMP's in regards to water quality, including illegal dumping of waste products, measure to reduce discharge, and educational material. (P, Mitigation Measure HYD-12)

22. **MM – Cultural Resources:** All ground disturbing activities shall be monitored by a qualified archaeologist to ensure that any discovery of significant archaeological materials and/or human remains is handled in accordance with approved guidelines. (P, Mitigation Measure CUL-1)
23. **Potted Plants – Materials:** Prior to building permit issuance, the following shall be incorporated into building permit plans: (P)
 - a. Remove the use of potted plant fixtures on the exterior of the buildings
 - b. Use alternative, high-quality, long-lasting materials where possible.
24. **Landscaping:** Prior to building permit issuance, the following modifications shall be incorporated in revised landscaping plans to the approval of the Planning Division: (P)
 - a. 24-inch box specimens shall be used for all trees.
 - b. Permeable paving and unit pavers be used throughout the site, minimally at locations that are used as gathering places or points of pedestrian intersections.
 - c. Curbing shall be used to separate driveways and parking areas from landscaped areas.
 - d. Structural (amended) soil shall be used for all landscaping in the public right-of-way.
 - e. All landscape structures shall be of long-lasting and high-quality materials.
 - f. All ground transformer, utilities, and mechanical equipment shall be located underground or screen from all views.
 - g. A detail of the water fountain feature shall be provided to the Planning Division for review and approval.
25. **Walls and Fences:** Perimeter/property fences shall be of solid construction and be long-lasting and high-quality. (P)
26. **Walls and Fences:** Permit plans shall show all walls and fences shall be stepped down in height as it approaches any intersection. (P)
27. **Park Wall:** The wall to the south of the Hetch-Hetchy shall incorporate landscaping on either side, provide elevation changes, and vary the wall face depth to allow for interesting shadow lines. (P)
28. **Lighting:** Prior to building permit issuance, the applicant shall provide a detailed isolumen (lighting level) plan that ensures the site will have adequate lighting. (P)
29. **Lighting:** No low-pressure sodium lighting shall be used anywhere in the project. (P)
30. **Lighting:** No pedestrian lighting fixtures shall exceed 16 feet in height. (P)
31. **Lighting:** Prior to issuance of building permits, permit plans shall incorporate light shields on light fixtures that are in close proximity to existing residential development. (P)
32. **Stormwater:** Prior to building permit issuance, permit plans shall incorporate the following BMP'S for post construction stormwater impacts: (P)
 - a. Labeling and maintenance (annual inspections) of storm drain facilities;
 - b. Storm drain inlet cleaning on an annual basis;
 - c. Street sweeping;
 - d. Roof downspouts drain and flows be directed to landscape areas where possible.
33. **Park:** The following shall be incorporated into final public park plans for the “Elm Park” east of Abel Street: (P)
 - a. Permeable paving be used for any walkways near the Elm trees.

- b. A low, wrought iron fence (not to exceed 42 inches) shall be installed along the Main and Abel Street boundaries.
- c. No fencing used at parks shall be of solid construction.
- 34. **Park:** Prior to building permit issuance, the applicant shall revise the plans to increase the width and improve the walkway from Palmer Street to the proposed new Hetch-Hetchy public park. (P)
- 35. **Park:** Final approval of all park equipment on properties to be dedicated to the City shall be brought back before the Park, Recreation, Cultural Resources Commission and City Council for review and approval. (P)
- 36. **Vector Control:** Prior to any construction or grading of the site, a vector control plan shall be submitted to and approved by the City. (P)
- 37. **Signage:** No approval for signage is provided at this time. All signage will require further review and approval by the City, as per Section 3 of the Sign Ordinance. (P)
- 38. **Landscaping:** Prior to issuance of building permit, plans shall show that all planter areas have an automatic, self-watering system installed. (P)
- 39. **Lighting:** Bollard lighting shall not be spaced more than forty (40) feet apart. (P)
- 40. **Color Permutations:** Prior to building permit issuance, all color permutations for all buildings shall be submitted to the Planning Division for review and approval. (P)

SPECIAL CONDITIONS FROM THE CITY COUNCIL

- 41. **Elm Tree Park:** Prior to removal of any elm trees in the existing elm grove, plans for the Elm tree display/memorial shall be submitted for review to the Parks, Recreation, and Cultural Resources Commission (PRCRC). The Elm tree display/memorial shall be approved by the Parks, Recreation, and Cultural Resources Commission and the City Council prior to installation. (CC)
- 42. **Art Contribution:** Prior to receipt of a building permit for the 342nd residential unit (50% of the project), the applicant shall contribute \$30,000 dollars for new artwork to be located in the public parks associated with the project. (CC)

VESTING MAJOR TENTATIVE MAP (P-MA2003-4) CONDITIONS OF APPROVAL:

SPECIAL CONDITIONS FROM THE PLANNING DIVISION

- 43. **General:** This recommendation for approval is for a Vesting Major Tentative Map to subdivide approximately 120 acres into 271 parcels (APN 086-11-013, 086-05-009 & 021). (P)
- 44. **General:** The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
- 45. **Park Amenities on the Hetch-Hetchy:** An executed document with acceptance of the proposed park amenities shall be submitted to the City prior to the recordation of the final map. If the amenities approved by the SFPUC are not in substantial conformance with the amenities shown on the project plans than the applicant will be required to pay an in-lieu park fee as provided for in the Disposition and Development Agreement between KB Home South Bay Inc. and the Redevelopment Agency. (P)
- 46. **MM- Public Services, Fire Apparatus:** The applicant will reimburse the City for the purchase of fire apparatus necessary to serve the project as provided for in the Disposition and Development Agreement. (P, Mitigation Measure PS-1)

SPECIAL CONDITIONS FROM THE ENGINEERING DIVISION

- 47. **Phasing Diagram:** The tentative map shall show the proposed phasing diagram of multiple final maps. Any changes to the phasing diagram will be subject to review and approval of the City Engineer. (E)

48. **Lot Designation:** The tentative map and all final maps shall designate all common lots and easements as lettered lots or lettered easements. (E)
49. **Final Map:** Prior to recordation of any final map, the developer shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North American Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. (E)
50. **Final Map:** Prior to issuance of any building permit (except for model homes) for each type of development (commercial, single family, condominiums), its respective final map shall be recorded. (E)
51. **Drainage:** Show on the tentative map how the site will drain. Drainage facilities outletting sump conditions shall be designed to convey the 100-year flows and protect all buildings. (E)
52. **Easements:** The developer shall dedicate on the final map necessary roadway easements for the proposed A, B and C streets, and easements for public service utility easements purposes, as shown on the Engineering Services Exhibit "T", dated 12/6/2004. (E)
53. **HOA:** Prior to any building permit issuance (except for model homes) the developer shall establish a homeowner association for the residential development. The homeowner association shall be responsible for the maintenance of the landscaping, walls, private streetlights, common area and private streets and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded. The CC&R document shall be submitted for review and approval by the City Engineer. (E)
54. **Operation and Maintenance:** Prior to any final map approval, the developer shall execute an Operation and Maintenance agreement for maintenance of the proposed storm water facilities such as detention basins, lagoons, and other best management practices devices. (E)
55. **MM – Drainage, Drainage Plan:** Prior to any final map approval or issuance of any grading permits, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. In addition, the proposed development is within the existing flood plains, and therefore it should not increase the 100-year water surface elevation on surrounding properties nor should it increase existing flooding. A flood plain analysis shall be prepared to account for all potential flooding sources/constraints affecting the project, to delineate the post development flood plain depth and lateral extend, including overflows resulting from upstream creeks, impact of a new bridge crossing Lower Penitencia Creek and changes in floodplain. All studies shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage/floodplain studies prior to any building permit issuance. (E, Mitigation Measure HYD-1)
56. **Bonding:** Prior to any final map approval, the developer shall bond for the construction of Abel Street as provided for in the Disposition and Development Agreement between KB Home South Bay Inc. and the Redevelopment Agency. These improvements are currently under design by the City. City will deliver construction plans to the developer for the construction of these improvements, except for the roadway and driveway connections to Abel Street, which shall be designed consistent with the Abel Street Improvements and constructed by the developer. (E)
57. **MM – Hydrology, Public Improvements:** Prior to any final map approval, the developer shall obtain design approval and bond for the construction of the following public improvements: (E, Mitigation Measure HYD-5, HYD-6, UTL-1, and UTL-3)
 - a. Public streets A, B, and C, including signage and striping, street lights, streetscape, adequate lighting at streets and driveway intersections with Abel Street and Great Mall Parkway.
 - b. Bridge and maintenance access road improvements over and along Lower Penitencia Creek.
 - c. Public utilities including, sewer, water, storm drain and recycle water mains and services, fire hydrants, undergrounding overhead utilities and one new storm drain outfall connection to Lower Penitencia Creek from the west near the existing northerly bridge over Penitencia Creek.

- d. Parks improvements and amenities including, Hetch Hetchy linear park from highway I880 to approximately 210 feet easterly of S. Main Street as shown on the project's approved Plan Unit Development Plans (PUD).
- e. A new 21-inch sanitary sewer main on Curtis Avenue from S. Main Street to Abel Street and reconstruction and upsizing of the existing 15-inch sanitary sewer main to 21-inch on Abel Street from Curtis Avenue to the existing 30-inch sanitary sewer line North of Hetch Hetchy right of way.
- f. Traffic signal installation at the intersection of Abel and proposed B Street and traffic signal modification at the intersection of the Great Mall Parkway and proposed A Street including traffic cameras and modifications to this intersection to provide an additional southbound left-turn lane into Great Mall Parkway.
- g. Penitencia Creek's levee improvements, including landscaping, raising the existing flood wall and Elmwood access road for flood control protection per approved floodplain study.
- h. Relocate the following as deemed necessary by the City Engineer; the existing 30" sanitary sewer line to proposed C street and the existing recycle water line within proposed C street to provide adequate clearance for the construction of the proposed wall along this street.

Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings in AutoCAD format upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials.

- 58. **MM – Hydrology, Bridge over Creek:** Prior to any final map approval, the developer shall acquire necessary right of way and/or encroachment permits from the Santa Clara Valley Water District (SCVWD) for the proposed bridge and utilities to be maintained by the City of Milpitas and other public agencies over Penitencia Creek at the proposed street crossings. (E, Mitigation Measure HYD-4)
- 59. **Joint Use Agreement:** Prior to any final map recordation, the developer shall process and obtain approval of a joint use agreement between the City and Santa Clara Valley Water District (SCVWD) for the proposed improvements and their maintenance within the SCVWD right-of-way to the satisfaction of City Engineer. (E)
- 60. **Joint Use Agreement:** Prior to any final map approval, the developer shall process and obtain approval of a joint use agreement between the City and San Francisco Public Utility Commission (SFPUC) for the proposed improvements and their maintenance within the Hetch Hetchy right-of-way to the satisfaction of City Engineer. (E)
- 61. **MTA:** Prior to any final map approval, the developer shall process and obtain approval from Valley Transportation Authority (VTA) for the proposed and necessary Bus Stop improvements; to the satisfaction of City Engineer. (E)
- 62. **PG&E:** Prior to any final map approval, the developer shall process plan and obtain approval from PG&E to the satisfaction of City Engineer. (E)
- 63. **Community Facilities District:** As provided for in the Disposition and Development Agreement between KB Home South Bay Inc. and the Redevelopment Agency: (E)
 - a. The developer shall submit an executed petition to annex into and establish, with respect to the property, the special taxes levied by a Community Facility District (CFD) for the purpose of maintaining the public services. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents.

64. **Exhibit T:** Make changes as noted on Engineering Services Exhibit "T"(dated 12/6/2004) and submit a revised tentative map for review and approval. (E)
65. **MM – Geology:** Prior to any final map approval, or issuance of any permit for grading, the developer shall submit final geology and soils report(s) addressing seismic ground shaking, liquefaction and other geologic and soils seismic issues as directed by and to the satisfaction of the City. The development of the project site shall be accomplished in accordance with the City approved final geology and soils report(s). (E, Mitigation Measure GEO-1)
66. **Adequate Water and Sewer Supplies:** Prior to issuance of building permits, the developer shall obtain "will serve" letters for water and sewer service confirming that 1) water supply is available for the project; and 2) that sewer capacity is available for the project, i.e. the project is within the safe and allocated capacity of the San Jose/Santa Clara Water Pollution Control Plant." The project's land use development approvals convey no vested right to issuance of a building permit. (E)
67. **MM – Hydrology, Utilities:** Prior to issuance of any building permits, developer shall obtain approval from the City Engineer of the water, sewer and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E, Mitigation Measure HYD-5, UTL-1)
68. **MM – Hydrology, Flood:** The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows that the lots West of Abel Street and a portion of lot 170 of this subdivision is in Special Flood Hazard Zone AO, and the remaining lots are in Flood Zone X. Flood proofing is required for the properties that are within the Special Flood Hazard Zone "AO". (E) Flood proofing can be accomplished by elevating the structure. Per Chapter 15, Title XI of Milpitas Municipal Code (Ord. No. 209.4) the lowest floor elevation (finish floor) of each structure shall be at least one foot above the BFE and the pad elevation shall be at or above the BFE, which is 2 feet above the highest adjacent ground for the properties West of Abel Street and one foot above the highest adjacent ground for the Lot 170. The structures pad(s) shall be properly designed by a registered civil engineer and compacted to meet FEMA's criterion (currently, 90% relative density by the Standard Proctor test procedure, ASTM D-698). In addition, the pad(s) shall extend beyond the building walls before dropping below the base flood elevation, and it shall have appropriate protection from erosion and scour. The applicant's civil engineer shall complete and submit a FEMA Elevation Certificate to the City prior to final building inspection, certifying the "as built" lowest floor elevation. Forms are available in the Engineering Division. Additionally, applicant shall demonstrate that this development will not cause any significant increase in flood levels during the occurrence of the base flood discharge. Any trailers, modular buildings, or pre-manufactured dwelling units located on this site for periods of time greater than one year, shall be adequately anchored to resist flotation, collapse and lateral movements per Floodplain Management Regulations. Flood insurance is required for any construction that is financed by government-backed loans. (E, Mitigation Measure HYD-2)
69. **Public Streets:** The design and construction of all public roadways, utility improvements and private streets improvements shall be per City of Milpitas design and specifications (except for the roadway widths, which shall be as shown on the Engineering Services Exhibit "T", dated 12/6/2004). The developer shall submit as-built plans and specification for the existing bridge over Lower Penitencia Creek (C street) and certification by a structural engineer as to design and loading adequacy of the bridge to meet the current Caltrans Bridge standards for a minimum of H20 loading to the satisfaction of the City Engineer; or reconstruct the existing bridge to current Caltrans standards. The proposed lighting element of the Abel Street improvements shall be extended to the proposed public streets ~~A~~ and B. (E)
70. **Underground Utilities:** In accordance with Milpitas Municipal Code XI-1-7.02-2, the developer shall underground all existing wires between the utility poles number 1 to 8, with utility poles number

1, 2, 3, 4, 5 and 6 to be removed, as shown on the preliminary tentative map with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more do not have to be undergrounded. All proposed utilities within the subdivision should also be undergrounded.

Also all existing wires between the utility poles number 10 to 16 shall be undergrounded with utility poles 11, 12, 13, 14 and 15 to be removed, if it is determined that these poles carrying voltage is lower than 37.5KV. (E)

71. **Community Facilities District:** As provided for in the Disposition and Development Agreement between KB Home South Bay Inc. and the Redevelopment Agency, the developer shall submit petitions to annex into the CFD. The developer/property owner shall comply with all rules, regulations, policies, and practices established by the City with respect to CFD including, without limitation, requirements for notices and disclosure to future owners or residents. (E)
72. **MM - Utilities:** Prior to building permit issuance, the developer shall pay its fair share cost of purchasing adequate public system sewage capacity for the respective developments. Fees shall consist of treatment plant fees up to the Master Plan level and connection fees. Impact fees for discharges above master plan levels for sewage collection system infrastructure improvements, and regional plant capacity needs (above the master plan capacities), as determined by the City Engineer. This amount is estimated to be \$466,500.00, as of September 2004, to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee. (E, Mitigation Measure UTL-2 & UTL 4)
73. **MM - Utilities:** Prior to any building permit issuance, the developer shall provide for adequate sewage pumping capacity at the Milpitas Main Sewage Pump Station for the respective developments. The developer can fulfill this obligation by payment of \$2,000,000.00 to the City for this purpose. This amount is as of September 2004, and to be adjusted by ENR at the time of payment. (E, Mitigation Measure UTL-2 & UTL-4)
74. **MM - Utilities:** Prior to building permit issuance; the developer shall pay its fair share cost of purchasing adequate public system water for the respective developments, including costs for capacity and storage needs above master plan capacities, as determined by the City Engineer. This amount is estimated to be \$84,860.00, as of September 2004, to be adjusted by ENR at the time of payment. (E, Mitigation Measure UTL-2 & UTL-4)
75. **MM - Utility Fees:** Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, Sewer and water connection fees, sewer treatment plant fees, plan check and inspection deposit. (E)
76. **Form and Agreement:** Prior to any building permit issuance, the developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division: (E)
 - a. Water Service Agreement(s) for water meter(s) and detector check(s).
 - b. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).
77. **Encroachment Permit:** Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit(s) from City of Milpitas Engineering Division. (E)
78. **MM – Biology, Wetland:** Prior to issuance of any grading permit for the commercial development to work within the isolated wetland depression located along western edge of project site, the applicant shall submit plans to Regional Water Quality Control Board (RWQCB) to determine if the isolated shallow depression meets the technical criteria for jurisdictional wetlands subject to regulation by state. If the isolated depressions are under the jurisdiction of RWQCB, the developer shall apply and obtain necessary permits to construct proposed improvements, before a permit for grading at this location can be issued. (E, Mitigation Measure BIO-6)

79. **MM – Biology, Permits from Outside Agencies:** Prior to issuance of any permit for work within and along Penitencia Creek, the developer shall obtain any necessary permits from U.S. Army Corps of Engineer, California Fish and Game, and Regional water Quality Control Board (RWQCB) and Santa Clara Valley Water district. (E, Mitigation Measure BIO-7)
80. **Permit from SFPUC:** Prior to start of any work along or within Hetch Hetchy right of way, the developer shall submit construction plan to San Francisco Public Utility Commission (SFPUC) for review and approval, and obtain necessary encroachment permits for the proposed work. (E)
81. **Permit from PG&E:** Prior to start of any work within Pacific Gas and Electric (PG&E) easement, the developer shall submit construction plans to PG&E for review and approval, and obtain necessary encroachment permit for the proposed work. (E)
82. **MM – Biology, Permit from SCVWD:** Prior to start of any work along or within Santa Clara Valley water District (SCVWD) right of way, the developer shall submit construction plans to SCVWD for review and approval, and obtain necessary encroachment permits for the proposed work. (E, Mitigation Measure, BIO-7)
83. **Permit from Caltrans:** Prior to start of work within State (Caltrans) right of way, the developer shall obtain necessary permits from State Department of Transportation (Caltrans). (E)
84. **Construction Schedule and Monitoring Plan:** Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personal parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (E)
85. **Irrigation:** In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, the developer shall: (E)
 - a. Provide separate water meters for domestic water service & irrigation service.
 - b. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord. No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process.
86. **Irrigation:** In accordance with Chapter 5, Title VIII (Ord. No. 238) and Chapter 6, Title VIII (Ord. No. 240) of Milpitas Municipal Code, the developer shall: (E)
 - a. Design the common areas and Public Park landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape adjacent to existing or future recycled water distribution lines (except for rehabilitated landscape less than 2500 square feet along the future alignment) with the exception for the street trees on South Abel Street and in Elm Park.
 - b. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the Department of Health Services (DOHS) for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and Department of

Health Services approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.

- c. Protect outdoor eating areas from over spray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas.
87. **NPDES Permit:** The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb one acre or greater, are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site-monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
88. **Vehicular Sight Distance:** The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
89. **On-site Utilities:** All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structures, trees or deep-rooted plants are permitted within City easements. (E)
90. **Public Streets:** Prior to issuance of any building occupancy/final inspection for the residential development West of Abel Street which exceeds 50 percent of the residential units on the West side of Abel Street, the proposed public streets A, B and C, including the traffic signal shall be constructed to the satisfaction of the City engineer or as stated on the schedule in the Development and Disposition Agreement, whichever occurs first. (E)
91. **Public Street and Signal:** Prior to issuance of any building occupancy/final inspection for the residential development west of Abel Street, the proposed public street A or public street B including the new traffic signal shall be constructed to the satisfaction of the City Engineer or as stated on the schedule in the Development and Disposition Agreement, whichever occurs first. (E)
92. **Trash Enclosures:** Prior to occupancy permit issuance, the applicant shall construct trash enclosures for the podium buildings (condominium). City review/approval is required prior to construction of the trash enclosures. (E)
93. **Solid Waste Service:** Prior to any building occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for each of the podium buildings. (E)
 - a. An adequate level of service for compacted trash collection; minimum service level of 2-3 yard trash bin collected 3 times a week.
 - b. An adequate level of service for recycle collection; minimum service level of 2-3 yard trash bin collected 2 times a week

After the buildings are occupied, the solid waste service shall be evaluated by BFI representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. The developer is also required to design and construct adequate staging area (s) for the temporary storage of trash and recycling bins outside of the building structures during collection days to the satisfaction of the City Engineer.

94. **Wall at Northern Boundary:** Construction of the proposed perimeter wall along the northerly project boundary west of Abel Street shall include adequate openings for emergency overland flows and flow from the backyard of the existing homes draining southerly. (E)
95. **Wall at Eastern Boundary:** Construction of the easterly perimeter wall east of Abel Street shall be of material to allow for the clear and unimpeded flood water (flood path) through the site onto Abel Street. (E)

SPECIAL CONDITIONS FROM THE CITY COUNCIL

96. **Sidewalk on East-West Road:** Plans for the east-west public road shall incorporate a sidewalk on the northern side of the east-west public road as noted on Engineering Services Exhibit "T"(dated 12/6/2004). Sidewalk construction shall be completed with the east-west road construction (CC)
97. **Land Dedication North-South Road:** Land east of the north-south public road, between Great Mall Parkway and the east-west road, up to the existing Elmwood Correctional Facility fence line, shall be dedicated and maintained by the City as noted on Engineering Services Exhibit "T"(dated 12/6/2004). (CC)

**PLANNED UNIT DEVELOPMENT (P-PD2003-1) – WEST SIDE OF ABEL STREET -
CONDITIONS OF APPROVAL:**

SPECIAL CONDITIONS FROM THE PLANNING DIVISION

98. **General:** This approval is for 368 total residential units: 165 single-family detached units and 203 single family attached (townhomes). (P)
99. **General:** The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
100. **Single Family Height Limit:** Prior to building permit issuance, the number of three story homes shall be limited on the street that faces the northern residential neighborhood. The homes that are three stories will be required to be strategically placed and proven to the City that they will minimize impacts to the homes to the north, and where proposed, increased landscaping shall be provided to screen views. (P)
101. **Disclosure on commercial:** A disclosure statement shall be provided to all future homeowners, within close proximity (300 feet) to the future commercial uses. (P)
102. **MM – Noise:** Prior to building permit issuance, permit plans shall provide adequate forced air mechanical ventilation so windows may be kept closed for all units with direct exposure to Interstate 880 and Abel Street. These are to include the following units: (P, Mitigation Measure NOI-2)
 - a. Units at the west side of the lot north of the correctional facility;
 - b. Units at the north and south sides of the lot north of the correctional facility that are less than 1,200 feet from Interstate 880;
 - c. Units at the east side of the lot north of the correctional facility and less than 250 from the centerline of Abel Street;
 - d. All units located at the lost east of Abel Street and adjoining the street.
103. **MM – Noise:** Prior to building permit issuance, permit plans shall incorporate a minimum six (6) foot high solid noise barrier fence (with minimum surface weight of three pounds per square foot) along the northern project site boundary where it adjoins existing single-family residences. Said noise barrier fence shall be constructed prior to occupancy for any development along the northern boundary of the project site. (P, Mitigation Measure, NOI-4)
104. **MM – Hazardous Materials:** Prior to issuance of any demolition permit for any golf facility structures, the applicant shall demonstrate to the City, through the use of a registered or licensed professional, that the interiors of the existing golf facility structures have been assessed for ACM's,

lead-based paint, and other potentially hazardous materials or waste. Should any materials be found, removal and disposal shall be in accordance with applicable state and federal regulations. (P, Mitigation Measure HAZ-1)

105. **MM – Hazardous Materials:** Prior to issuance of any grading or demolition permit the applicant shall demonstrate to the City, through the use of a registered or licensed professional, that the two ground mounted electrical transformers and their surrounding soils have been tested for presence of PCB's. Should any materials be found, removal and disposal shall be in accordance with applicable state and federal regulations. (P, Mitigation Measure HAZ-2)
106. **Decorative Crosswalks:** Prior to site improvement permit issuance, permit plans shall incorporate raised/decorative crosswalks across driveways. (P)
107. **Pedestrian Access:** Prior to site improvement permit issuance, permit plans shall incorporate at least two (2) access points, spaced evenly across that site, that provides pedestrian access from the project to the park area to the south. (P)
108. **Architecture:** Prior to building permit issuance, permit plans shall incorporate the following modifications to the approval of the Planning Division: (P)
 - a. The rear of the buildings shall have an increased variety of architectural treatments/elevation changes/recesses and pop outs, especially for the longer buildings as they currently have a long monotonous elevation.
 - b. On the sides of the buildings, windows shall be offset of each other to minimize privacy impacts.
 - c. Gutters and downspouts shall be painted to blend into the building.
 - d. Remove the "Z" design shutters. They do not match the architecture of the buildings and appear out of place. Replace with an alternative shutter design that is more in keeping with the proposed architecture.
 - e. Prior to building permit issuance a site layout of the homes shall be provided for review and approval by the City that shows the building end units proposed at street ends and a complete layout of the single-family homes. A mix of units shall be provided at the end of the streets to discourage repetition in the layout and appearance of the site and repetition shall also be avoided in the single-family homes.
 - f. The architectural treatment in plan 2 of the single family home package shall be modified to not have architectural features that are out of place and disharmonious with the overall building architecture.
 - g. A complete call out of materials used for the project shall be provided on plans.
 - h. All buildings shall have a minimum eave of six (6) inches. (P)
109. **PUD Conditions:** The following conditions shall apply to the project: (P)
 - a. No building additions or accessory buildings shall be allowed throughout the project.
 - b. Re-roof materials shall be limited to concrete tiles.
 - c. Building color changes shall be to the approval of the Planning Division.
 - d. Any exterior building modifications shall be to the approval of the Planning Commission,
 - e. No garage conversions are allowed.
 - f. No conversion of gourd floor areas into a bedroom. Planning Division review of the CC&R's to also include this requirement shall be completed prior to building permit issuance.
110. **Recreation Building:** Prior to building permit issuance, the size of the recreation building and multi-purpose room shall have an increase in square footage. (P)

111. **Parking:** The CC&R's shall incorporate a requirement that all garages be used for parking by residents and not for storage. In addition, the CC&R's shall include a prohibition of any resident parking in guest spaces.
112. **Bicycle Parking:** Prior to building permit issuance, permit plans shall show bicycle parking at the recreation area and within the private garage of each unit. (P)
113. **Landscaping:** Prior to building permit issuance, the following modifications shall be incorporated in revised landscaping plans to the approval of the Planning Division: (P)
 - a. Landscape areas, planted with trees and shrubs, shall be provided between the garages of the townhouse buildings similar to what is proposed at the rear of the single-family homes.
 - b. No use of potted plants on the site, unless it is maintained by the Homeowners Association (HOA).
 - c. Where wood is proposed, alternative materials that are long-lasting and high-quality shall be used where possible.
 - d. Provide trees at the northern end of the "block" for all four (4) rows of townhouses and provide trees on either side of the two (2) "sub" entrances into the site off of the northern spine road.
114. **Walls:** Prior to building permit issuance, permit plans shall show the northern boundary wall be constructed using concrete masonry construction. (P)
115. **Walls:** Prior to permit issuance for the 10-foot wall at the northern edge of the property line, the applicant shall modify the wall to include vertical or decorative elements to break up the long wall elevation. (P)
116. **Walls:** Prior to building permit issuance, permit plans shall show that retaining walls that exceed four (4) feet in height will contain decorative features in its design or shall incorporate landscaping in front of the wall. (P)
117. **Stormwater Control:** Prior to grading or site improvement plan issuance, the applicant shall slope driveways into landscaped areas where possible. (P)
118. **Stormwater:** Prior to building permit issuance, the applicant shall show that the mechanical equipment for stormwater control is maintained on an annual basis by the future Homeowners Association and if any future study shows that one will not accommodate the entire site, an adequate amount will be located on the site to ensure that capacity is met. (P)
119. **Enhanced Landscaping:** Prior to building permit issuance, revised landscaping plans shall be submitted and approved by the Planning Division that incorporates enhanced landscaping on the north side of parcel D to provide adequate screening along the northern subdivision boundary. (PC)
120. **Long-Term Recreation:** The applicant will make a contribution towards the long-term recreational use of the Cracolice building and site at 540 South Abel Street as provided for in the Disposition and Development Agreement. (P)

SPECIAL CONDITIONS FROM THE CITY COUNCIL

121. **Public Park:** Public Park plans for the Hetch-Hetchy right-of-way, plans shall show landscaping reduced to allow as much lawn area as possible. (CC)
122. **Public Park:** Public Park plans for the Hetch-Hetchy right-of-way shall show as much fill as allowed by the San Francisco PUC. (CC)
123. **Public Park:** Public Park plans for the Hetch-Hetchy right-of-way shall include the following modifications. (CC)
 - a. Clusters of picnic tables and shade structures,
 - b. Removal of the sand volleyball court,

- c. Install one (1) full basketball court, rather than 2 half courts,
 - d. A new sidewalk on the north side of the Hetch-Hetchy right-of-way, adjacent to the parking lot.
124. **Public Park:** Public Park plans for the area east of Parcel D, shall incorporate bathroom facilities, the bathrooms shall be installed as part of development of the park. (CC)
125. **Crosswalk:** Prior to building permit and/or site improvements permit issuance, a new crosswalk shall be incorporated across the vehicular access at the northwest entrance into the site. (CC)

SITE AND ARCHITECTURAL REVIEW (P-SZ2003-6) AND USE PERMIT NO. P-UP2003-26 – EAST SIDE OF ABEL STREET - CONDITIONS OF APPROVAL:

126. **General:** This approval is for a 315 -unit multi-family residential development and Use Permit No. P-UP2003-26 to grant exceptions including number of levels, setbacks, and open space for individual units. (P)
127. **General:** The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
128. **MM – Noise:** Prior to building permit issuance, permit plans shall provide adequate forced air mechanical ventilation so windows may be kept closed for all units with direct exposure to Interstate 880 and Abel Street. These are to include the following units: (P, Mitigation Measure NOI-2)
- a. Units at the west side of the lot north of the correctional facility;
 - b. Units at the north and south sides of the lot north of the correctional facility that are less than 1,200 feet from Interstate 880;
 - c. Units at the east side of the lot north of the correctional facility and less than 250 from the centerline of Abel Street;
 - d. All units located at the lot east of Abel Street and adjoining the street.
129. **Site Plan:** Prior to building permit issuance, permit plans shall incorporate the following modifications to the approval of City staff: (P)
- a. To provide an improved connection to the recreation area from the podium buildings, the parking garage immediately to the east of the middle podium building should be moved further north to allow a pedestrian connection across the access road. This will prevent pedestrians from having to cross two driveways to access the recreation area.
 - b. To encourage walkability, pedestrian walkways shall be provided that connect the buildings to Abel Street. There is an inconsistency in the plans, in that the floor plans show an exterior access on the buildings fronting Abel Street, but no pathway is provided on the landscape plans.
 - c. Complete the pedestrian connection from the southern podium building to Abel Street. There is a walkway on the plans that dead ends approximately 20 feet from Abel Street. Complete this walkway to allow pedestrian use to Abel Street and force pedestrians into landscaped areas.
 - d. Provide at least one car wash area for each portion of the project for resident use. This car wash area shall be sloped and drained to the sanitary system.
 - e. Due to problems associated with gates and potential queues extending into Abel Street, no gates shall be allowed for the eastern portion of the project. Staff is already supporting gates into the podium parking area, “multiple” or two layers of gating at different access points can not be supported.
130. **Architecture:** Prior to building permit issuance, permit plans shall incorporate the following modifications to the approval of the Planning Division: (P)
- a. To ensure the longevity of the project, decorative elements shall be constructed of high-quality, long lasting materials.

- b. The screening for the garage openings shall be decorative and not appear utilitarian, especially since they will be very visible from the pedestrian perspective and Abel Street and Curtis Avenue.
 - c. To announce the entry of the buildings, additional architectural embellishment shall be provided as part of the main lobby entrances.
 - d. A “base” feature shall be provided for the buildings to give the building better balance and to provide a better connection for the pedestrian experience, especially along Abel Street and Curtis Avenue.
 - e. The proposed plans do not show the locations of any downspouts or rain gutters. As this will often impact the overall architecture of the building, plans shall be submitted that show how the downspouts and rain gutters are incorporated into the buildings.
 - f. In the architectural plans provided only elevations of the 6 and 8 car garages are provided, prior to any permit approval, submit the 4, 7 and 9 car garages to the City for review and approval.
 - g. A complete call out of materials used for the project shall be provided on plans, including the colors and materials used for the garage buildings.
 - h. All sloped roofs shall have a minimum eave of six (6) inches.
131. **Floor Plan:** Prior to building permit issuance, permit plans shall not have doors in the bathrooms that open up into the sink area, they should open into the walls. (P)
132. **Floor Plan:** Prior to building permit issuance, permit plans shall incorporate a design solution for the small washer and dryer spaces that does not use a drain/collector pan on the floor. Incorporate the drain into the floor without using a pan. (P)
133. **Bicycle Parking:** Prior to building permit issuance, permit plans shall incorporate bicycle parking near the community building/pool area and provide bicycle hooks in other areas of the project (such as private garages and patios) to make up the required bicycle parking. (P)
134. **Landscaping:** Prior to building permit issuance, the following modifications shall be incorporated in revised landscaping plans to the approval of the Planning Division: (P)
- a. Landscaping proposed in the plaza areas shall tolerate low sunlight levels.
 - b. Landscaping and/or fencing shall be used to prevent access in the area behind the garage buildings and the property boundaries.
135. **Stormwater:** Prior to any grading permit, the applicant shall submit for review and approval by the City a pre-construction stormwater control plan. (P)
136. **Stormwater:** Prior to any building permit issuance, the applicant shall submit for review and approval by the City a post-construction stormwater control plan that incorporates mechanical equipment if necessary, to clean the stormwater runoff prior to discharge into City storm drain systems. (P)
137. **Stormwater:** Prior to grading or site improvement plan issuance, the applicant shall slope parking lot and driveways into landscaped areas where possible. (P)
138. **Drainage of Plaza:** Prior to issuance of building permits, the applicant shall submit an explanation of the drainage of the landscaped plaza area that does not cause any future damage to the building or site erosion. (P)

(P) – Planning Division

(E) – Engineering Division

(PC) – Planning Commission

(CC) – City Council

REGULAR

NUMBER: 240.1

TITLE: ORDINANCE AMENDING AN EXISTING SUBSECTION TO SECTION 3.00 OF TITLE VIII, CHAPTER 6 ENTITLED "WATER CONSERVATION"

HISTORY: This ordinance was introduced (first reading) at a meeting of the City Council of the City of Milpitas on August 2, 2005, upon motion by Councilmember Livengood, and was finally adopted (second reading) at a meeting of said Council on August 16, 2005, upon motion by Vice Mayor Gomez. Said ordinance was duly passed and ordered published in accordance with the law by the following vote:


AYES: (4) Mayor Esteves, Vice Mayor Gomez, Councilmembers Giordano and Livengood,

NOES: (0) None

ABSENT: (1) Councilmember Polanski

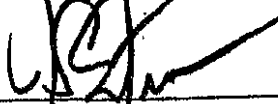
ABSTAIN: (0) None

ATTEST:



Mary Lavelle, City Clerk

APPROVED:



Jose Esteves, Mayor

APPROVED AS TO FORM:



Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

Section 1. RECITALS AND FINDINGS

- A. Pursuant to Government Code section 65853 and 65854, the City Council of the City of Milpitas held a properly noticed public hearing August 2, 2005 to consider the amendments to Title VIII, Chapter 6 of the Milpitas Municipal Code.
- B. The City Council finds that this Ordinance does not render Title VIII, Chapter 6 inconsistent with the City of Milpitas General Plan.

Section 2. Title VIII, Chapter 6, Section 3.00 is hereby amended to read as follows:

VIII-6-3.00 Restrictions

The following uses of potable water are prohibited:

- 3.01 Use that results in flooding or runoff in gutters, waterways, patios, sidewalks, driveways, or streets except as permitted in Section 3.02 A and B.
- 3.02 Use without a shutoff nozzle on the outlet end of the hose for:
 - A. Washing cars, buses, boats, aircraft, trailers or other vehicles;
 - B. Washing buildings, structures, sidewalks, walkways, driveways, patios, parking lots, tennis courts, or other hard-surfaced areas; and
 - C. Watering outside plants, lawn, landscape and turf areas.
- 3.03 Service of water by any restaurant except upon the request of a customer.
- 3.04 Use through broken or defective plumbing, sprinkler, watering or irrigation systems.
- 3.05 Use in new, added or altered commercial car wash equipment unless a recycled water system is incorporated.

3.06 Use in new, added or altered cooling system equipment unless at least fifty percent (50%) of the water is recycled. A waiver to allow less than fifty percent (50%) recycling may be granted by the Chief Building Official due to water quality concerns only. Cost is not an acceptable reason to request or receive a waiver.

3.07 Appropriate use for irrigation if reclaimed water is available, except in the following situations as deemed necessary by City Engineer:

- A. Implementation of the streetscape along Abel and Main Streets;
- B. Irrigation of City Cultural Resources;
- C. An establishment period for native plantings, when irrigation will be eliminated at a later period;
- D. Where recycled water use is prohibited under Title 22 of the State Water Code;
- E. Other situations where reclaimed water use is deemed inappropriate by City Engineer.

3.08 Use in new, added, or altered decorative fountains unless a recycled water system is incorporated. (Ord. 240 (part), 5/3/94)

Section 3. *The Table of Contents* of Title VII (Public Utilities) of the City of Milpitas is hereby amended to reflect the deletion of the chapter as follows:

Public Utilities Table of Contents

Chapters:

VII-1	Granting a Franchise for Electrical Service	435
VII-2	Granting a Franchise for Gas Service	437
VII-3	Conversion of Overhead Utility Facilities	439
VII-4	Nonessential Uses of Water (Repealed)	443
VII-6	Water Conservation	445

Section 4. *The Table of Contents of Title VIII (Public Works) of the City of Milpitas is hereby amended to reflect the addition of chapter 6 as follows:*

Public Works Table of Contents

Chapters:

VIII-1	Water System	449
VIII-2	Milpitas Sanitary Code	463
VIII-3	Backflow Prevention and Cross- Connection Control	498-1
VIII-4	Fees for New Developments	498-8
VIII-5	Water Efficient Landscapes	498-11
<u>VIII-6</u>	<u>Water Conservation</u>	<u>499</u>

Section 5. PUBLICATION AND EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days after adoption, and prior to the expiration of 15 days from the passage thereof shall be published at least once in the Milpitas Post, a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara, thenceforth and thereafter the same shall be in full force and effect.

Section 6. SEVERABILITY

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report prepared by: Staci Pereira

Public Hearing: Yes: X No:

Notices Mailed On: 10-28-05

Published On: 10-27-05

Posted On: 10-28-05

TITLE: MAJOR TENTATIVE MAP AMENDMENT NO. TM2005-1

Proposal: Request to modify Major Tentative Map No. MA2003-4 Condition of Approval Nos. 69 (Streetlight fixtures) and 86 (Recycled Water) of the recently approved KB Homes Development located on the east and west sides of South Abel Street.

Location: Both of sides South Abel Street, north of the Elmwood Correctional Facility and land located along the eastern edge of I-880, north of Great Mall Parkway (APNs 86-05-003, 009 & 012, 021, 86-10-001, 025 & 026, 86-11-008 & 013 and 86-25-010)

RECOMMENDATION: Recommend approval to City Council.

Applicant: KB Homes, South Bay, Inc. Attn: Brenda Searle-Sung, 6700 Koll Center Parkway, Suite 200, Pleasanton, CA 94566

Property Owner: KB Homes, South Bay, Inc. Attn: Brenda Searle-Sung, 6700 Koll Center Parkway, Suite 200, Pleasanton, CA 94566

Previous Action(s): GP2003-1, ZC2003-2, MA2003-4, PD2003-1, SZ2003-6, UP2003-26 and EA2003-7

Environmental Info: Exempt from CEQA pursuant to Section 15061(b)(3) in that staff is certain the proposed changes cannot possibly have a significant effect on the environment.

General Plan Designation: Multifamily High Density and Multifamily Very High Density

Present Zoning: Multifamily High Density (R3) and Multifamily Very High Density (R4)

Existing Land Use: Vacant

Agenda Sent To: Applicant/owner

Attachments: Exhibit A, Ordinance No. 240.1 (Water Conservation)

PJ No: 3160

BACKGROUND

In January 2005, the City approved a 683-unit residential development on approximately 35 acres that includes small lot single family, townhomes, condominiums, and public park space. Approvals granted for this residential development included: General and Specific Plan amendment, Zoning Map Amendment, Vesting Major Tentative Map, Planned Unit Development, Site and Architectural Approval and Use Permit Approval. Subsequent Planning Commission approvals were received on August 24, 2005 for four onsite temporary tract signs.

Site Description

The Project Area encompasses 126± acres located along both sides of South Abel Street, north of Great Mall Parkway and includes 5.6 acres of Hetch-Hetchy right-of-way between I-880 and the Union Pacific Railroad tracks east of South Main Street. The project site borders S. Abbott Avenue and Hwy 880 on the west, residential uses to the north, Main Street on the east and Curtis Avenue and Elmwood Correctional facility to the south. Adjacent land uses include industrial and residential uses to the north, commercial and retail services to the east and residential and the Elmwood Correctional facility to the south.

APPLICATION REQUEST

Pursuant to Section XI-1-4.00 (Tentative Map) and Section XI-1-30.00 (Vesting Tentative Map) of the Subdivision Ordinance of the Milpitas Municipal Code the applicant request to amend Major Tentative Map No. TM2003-4.

Project Description

A modification is requested to Condition of Approval No. 69 of the Major Tentative Map No. MA2003-4 which sets forth the design and construction requirements for the public and private improvements, including streets, sidewalks, streetlights, landscaping, etc. The applicant agrees to design and install these improvements, however, the City and the applicant conclude that the required extension of the pedestrian-scaled, decorative streetlights approved for Abel Street to one of the two new public streets is not appropriate for the area and thus should be removed from the condition.

Additionally, since the time of the project's approval modifications to the City's Water Conservation Ordinance have occurred which provide for specific exemptions from the City's recycled water requirements. These exemptions, to not use recycled water for cultural resources and streetscape improvements along Main and Abel Streets, require modifications to Condition of Approval No. 86(a).

DISCUSSION

Decorative Street Light

The project includes three new public streets as well as numerous private streets throughout the residential development. Two of the three public streets, "A" and "B" Streets (recently named Thompson Avenue and Alvarez Court, respectively) were required to have similar streetscape treatments as Abel Street (i.e. street trees and decorative street lights). "C" Street (recently

named Machado Street) only required street trees since it only has a sidewalk on the north side and is an access road for the Elmwood Correctional Facility.

The City has concluded that the extension of pedestrian-scaled, decorative streetlights are not appropriate for "A" Street. The intent of the condition was to have a continuous streetscape from Abel Street into the new residential development and that objective will not change. However, the location of "A" Street, which runs north to south along the west side of the residential development and terminates at Great Mall Parkway, does not directly connect to Abel Street. In addition, the decorative streetlights are typically used for areas with pedestrian activity and provide an identity and theme for downtown. The pedestrian-scaled lighting does not appear appropriate for "A" Street, which does not envision many pedestrians due to the adjacent uses, future auto dealerships and the Elmwood Correctional Facility and it is not considered part of the downtown.

Staff supports no longer requiring the decorative streetlights on "A" Street (Thompson Street) and requiring them on "B" Street (Alvarez Court) only. Staff recommends the following modification to Condition of Approval No. 69:

- 69. Public Streets:** The design and construction of all public roadways, utility improvements and private streets improvements shall be per City of Milpitas design and specifications (except for the roadway widths, which shall be as shown on the Engineering Services Exhibit "T", dated 12/6/2004). The developer shall submit as-built plans and specifications for the existing bridge over Lower Penitencia Creek (C street) and certification by a structural engineer as to design and loading adequacy of the bridge to meet the current Caltrans Bridge standards for a minimum of H20 loading to the satisfaction of the City Engineer; or reconstruct the existing bridge to current Caltrans standards. The proposed lighting element of the Abel Street improvements shall be extended to the proposed public streets ~~A and B.~~ (E)

Recycled Water Exemption

At the time of the project review, the City Water Conservation Ordinance (VIII-6-3.00) required that all common areas, public parks and streetscape improvements be designed and constructed to use recycled water. Thus, this requirement was imposed on the KB/Elmwood project as Condition of Approval No. 86. Subsequent to the project's approval, however, it was determined that the street tree species identified for the Main and Abel Streetscape Plan in Midtown require water with a lower salt content than that contained in recycled water. Additionally, staff discovered a similar sensitivity of the historic elm trees in Elm Park in the condominium portion of the development on the East side of Abel Street.

Recognizing that an exemption of the recycled water requirement was necessary for all Main and Abel Street trees in the Midtown area and for sensitive cultural resources, staff prepared an amendment to the Water Conservation Ordinance, which the City Council approved on August 16th, 2005 (refer to attached Ordinance No 420.1). Thus, the following modification to Condition of Approval No. 86(a) is proposed:

86 Irrigation: In accordance with Chapter 5, Title VIII (Ord. No. 238) and Chapter 6, Title VIII (Ord. No. 240.1) of Milpitas Municipal Code, the developer shall: (E)

- a. Design the common areas and Public Park landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape adjacent to existing or future recycled water distribution lines (except for rehabilitated landscape less than 2500 square feet along the future alignment) with the exception for the street trees on South Abel Street and in Elm Park.

RECOMMENDATION

Close the Public Hearing. Recommend approval to City Council of Major Tentative Map Amendment No. TM2005-3 based on the Findings and *Modified* Special Conditions of Approval listed below.

FINDINGS

1. The proposed modifications to Conditions of Approval Nos. 69 and 86 of the Major Tentative Map continue to be conformance with the General Plan and Midtown Specific Plan as it is to subdivide land into smaller parcels to accommodate a high-density housing project.
2. The proposed modifications to Condition of Approval Nos. 69 and 86 of the Major Tentative Map continue to be in conformance with the Zoning Ordinance, by being within the allowable densities of the zoning districts and through the approval of exceptions to development standards.
3. The proposed modifications to Condition of Approval Nos. 69 and 86 of the Vesting Major Tentative Map continue to be consistent with the State Subdivision Map Act, the Subdivision Ordinance and with General Plan principles including:
 - a. Compact development and higher densities;
 - b. Variety of housing types;
 - c. Park-like setting;
 - d. Implementation of Midtown Specific Plan goals, policies and development standards.It is also consistent with the following General Plan policies including:
 - e. Compliance with building intensity limits;
 - f. Promoting in-fill development in the incorporated City limits;
 - g. Development of the Midtown area as an attractive and economically vital district.
4. The proposed modifications to Condition of Approval Nos. 69 and 86 of the Vesting Major Tentative Map remain physically suitable for the type and density of development as they are incorporating improvements to accommodate the project.
5. The proposed modifications to Condition of Approval Nos. 69 and 86 of the Vesting Major Tentative Map will not cause any damage or injury to fish and wildlife and will not cause any

public health problems as the project is incorporating mitigation measures to prevent this from occurring as a result of the project.

6. As modified, the Vesting Major Tentative Map continues to not conflict with any existing easements as it will require encroachment permits prior to any work in any existing easements.

SPECIAL CONDITIONS (*modified conditions only*)

69. **Public Streets:** The design and construction of all public roadways, utility improvements and private streets improvements shall be per City of Milpitas design and specifications (except for the roadway widths, which shall be as shown on the Engineering Services Exhibit "T", dated 12/6/2004). The developer shall submit as-built plans and specifications for the existing bridge over Lower Penitencia Creek (C street) and certification by a structural engineer as to design and loading adequacy of the bridge to meet the current Caltrans Bridge standards for a minimum of H20 loading to the satisfaction of the City Engineer; or reconstruct the existing bridge to current Caltrans standards. The proposed lighting element of the Abel Street improvements shall be extended to the proposed public street B. (E)
86. **Irrigation:** In accordance with Chapter 5, Title VIII (Ord. No. 238) and Chapter 6, Title VIII (Ord. No. 240) of Milpitas Municipal Code, the developer shall: (E)
 - a. Design the common areas and Public Park landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape adjacent to existing or future recycled water distribution lines (except for rehabilitated landscape less than 2500 square feet along the future alignment) with the exception for the street trees on South Abel Street and in Elm Park.
 - b. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the Department of Health Services (DOHS) for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and Department of Health Services approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.

KB Terra Serena Site Plan

Exhibit A

